December 2018

Dear Edward,

EU EXIT LEGISLATION - PROTOCOL WITH SCOTTISH PARLIAMENT
POLICY AREA: ANIMAL HEALTH

The Import and Trade of Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2018

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell wrote to the Conveners of the Finance & Constitution and the Delegated Powers & Legislative Reform Committees on 11 September setting out the Scottish Government's views on EU withdrawal. That letter also said that we must respond to the UK Government's preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach one notification (as referenced in the heading above) which sets out the details of the SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this instrument. This is part of a series of such notifications that myself and Ministerial colleagues will be sending to Parliamentary committees over the coming weeks. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether it is in keeping with the terms of this notification.

This particular notification and Instrument, The Import and Trade of Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2018, is being made using powers under the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

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retained EU law relating to trade in animals and animal products and the non-commercial movement of pet animals and equines.

Environment, Climate Change and Land Reform Committee have been sent a copy of this notification for their interests. I am copying this letter to Graham Simpson MSP, Convener of the Delegated Powers and Law Reform Committee.

As mentioned in the notification, on this occasion the Scottish Parliament is being asked to forego the full 28 days in which to consider whether or not to consent to this proposal. I should emphasise that this is for reasons outwith the Scottish Government’s control. The UK Government had indicated to us that it intended to deal with this SI under the negative procedure, but at the last minute decided to subject the proposed SI to the affirmative procedure in the Westminster Parliament. This has, in turn, had implications for the timing of the SI and the consent process. This is clearly unsatisfactory, and I appreciate the difficulties that this change may cause the Committee. However, given the importance of ensuring that both the UK and Scotland are as ready as they can be for exiting the EU, I would be grateful if a reply could be provided by no later than 14 January 2019.

MAIRI GOUGEON
NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Import and Trade of Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2018.

A brief explanation of the law that the proposals amend

The Import and Trade of Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2018 ("the proposed SI") is being made using powers under the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become retained EU law relating to trade in animals and animal products and the non-commercial movement of pet animals.

The EU legislation that will be amended by the proposed SI is extensive and is therefore set out in the Annex.

The proposed SI also amends the Trade in Animals and Related Products Regulations 2011 (for England) and the Trade in Animals and Related Products Regulations (Northern Ireland) 2011. The amendments to those Regulations are not referred to further in this notification.

Summary of the proposals and how these correct deficiencies

The legislative amendments contained in the proposed SI do not change existing policy, but will be necessary in the event of a ‘no deal’ exit from the EU on 29 March 2019 to ensure the operability of existing provision on trade in animals and animal related products.

The legislation amended currently contains various EU references, terminology and definitions that will not be appropriate once the UK is no longer an EU Member State. The proposed SI will address deficiencies in retained EU law by making appropriate deletions and/or amendments. The proposed SI will also make provision for both legislative and administrative functions to be exercised by the “appropriate authority” which, in relation to Scotland, is the Scottish Ministers or the Secretary of State with the consent of the Scottish Ministers (with similar provisions for the other devolved administrations). The amendments that will be brought forward by the proposed SI include:

- References to “Community legislation” amended to alternatives as appropriate (e.g. “EU derived domestic legislation”).
- References to “member State” amended to “the appropriate authority”.
- New definition of “third country” added to make clear that it means any country other than an EU member State or the UK, including the Channel Islands and the Isle of Man.
- References to various certificates referenced in existing EU legislation are, where appropriate, substituted for “relevant certificates as published by the appropriate authority". 

• Reference to “Community reference laboratory” is amended to “national reference laboratory”.
• References to the “TRACES” system (the EU’s Trade Control and Expert System, tool for all sanitary requirements on intra-EU trade and importation of animals, semen and embryo, food, feed and plants) replaced where appropriate with references to “the United Kingdom’s system for import control notifications” (this is the UK’s replacement system for TRACES currently under development by the Animal & Plant Health Agency).
• Making provision for the legislative functions currently exercisable at an EU level to be exercised domestically by the “appropriate authority” (in relation for example to movement of pet animals, where the appropriate authority will have power by regulations to make provision in relation, for example, to species specific requirements for marking or describing pet animals and species specific preventive health measures for diseases or infections.

An explanation of why the change is considered necessary

The changes made by this proposed SI, whilst numerous, are fairly minor and technical in nature and are necessary to ensure that what will become retained EU law continues to be operable should the UK leave the EU under a no deal scenario. It is also hoped that maintaining in the UK a system based on EU-wide rules will help to facilitate and maintain trade between the UK and the EU.

Scottish Government categorisation of significance of proposals

Category B. The legislative amendments which will be made by the proposed SI do not change existing policy. The proposed SI does however transfer a number of administrative and legislative functions currently falling to the Commission to the Scottish Ministers. The Scottish Government has worked with DEFRA on the amendments and is content that the provision to be made is necessary and appropriate to ensure that what will become retained EU law continues to be operable once the UK leaves the EU.

Impact on devolved areas

The proposed SI will make provision in a devolved area. The legislative amendments in the proposed SI are technical in nature, do not include policy changes and are required to ensure the continued operability of existing measures. It will not have a significant impact on devolved areas of competence. It is intended that the proposed changes will respect and protect the Scottish Ministers’ powers under the devolution settlement. In particular, the proposed SI will also make provision for administrative and legislative functions in the legislation being amended to be exercised by the “appropriate authority”: in relation to Scotland, by the Scottish Ministers or the Secretary of State with the consent of the Scottish Ministers (with similar provisions for the other devolved administrations).

An example of provision made for legislative functions to be exercised by the appropriate authority is in relation to movement of pet animals, where the appropriate authority will have power by regulations to make provision in relation, for example, to species specific requirements for marking or describing pet animals and species
specific preventive health measures for diseases or infections (being legislative functions previously exercisable at an EU level).

**Summary of stakeholder engagement/consultation**

We are in regular contact and communication with Defra and other devolved administrations. There has been no formal stakeholder engagement or consultation in relation to the proposed SI as it is envisaged that there will be no measurable change to policy and no operational or financial impact is anticipated.

**A note of other impact assessments, (if available)**

An impact assessment has not been carried out in relation to the proposed SI as its main aim is to remove or substitute what will become redundant references or provisions, add new definitions where necessary and generally ensure that what will become retained EU law is operable upon EU exit under a no deal scenario.

**Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation**

The Scottish Ministers believe that the changes in the proposed SI are necessary to secure continuation of an effective regime for trade in animals and animal related products and the non-commercial movement of pet animals. This will help to provide continuity of business in these areas on EU exit. The proposed SI will make amendments to existing EU legislation which are minor and technical in nature and aim to ensure the continued operability of what will become retained EU law. Where the proposed SI will make provision for exercise of administrative and legislative functions in the legislation being amended provision is made for those functions to be exercised by the “appropriate authority”: in relation to Scotland, by the Scottish Ministers or the Secretary of State with the consent of the Scottish Ministers (with similar provisions for the other devolved administrations). In these circumstances the Scottish Ministers consider it is appropriate that the proposed SI be brought forward by the UK Government. This is particularly the case in circumstances where the proposed SI will protect Scottish Ministers’ interests under the devolution settlement as outlined above.

**Where relevant – detail how Scottish Ministers have had regard to the guiding principles on animal welfare and the environment**

The proposed SI’s amendments do not change existing policy, but are necessary to ensure that existing controls on imports of live animals, products of animal origin, germplasm (semen, ova and embryos) and the non-commercial movement of pet animals can continue to operate in the UK should we leave the EU under a ‘no deal’ scenario. The EU instruments amended have been made with the guiding principles on animal welfare and the environment in mind. We are content therefore that the proposed SI will not adversely impact on animal welfare (in particular that regard must be given to the welfare requirements of animals as sentient beings).

**Intended laying date (if known) of instruments likely to arise**
The proposed SI is subject to the affirmative procedure and will be laid at Westminster on 14 January 2019. We are working with Defra on the basis no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?

On this occasion the Scottish Parliament does not have the full 28 days to consider this proposal to consent. The Scottish Parliament is respectfully asked to consider and respond to this notification by no later than 14 January 2019. The reason for this is a recent decision within Defra to include in the proposed Instrument provision in relation to exercise of legislative functions as outlined above and which was out with our control. Accordingly, the proposed SI is now subject to affirmative procedure in the Westminster Parliament which has impacted on the timetable for its delivery and consequently the time that can be given to considering the proposal to consent.

Information about any time dependency associated with the proposal

N/A.

Any significant financial implications?

The proposed SI is not expected to have any financial implications, including for the Scottish Government and for stakeholders in Scotland.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

There are no anticipated broader governance issues anticipated with the proposed SI and the Scottish Government will continue its good working relationships with UK Government and the other Devolved Administrations. The proposed SI will simply make a number of necessary amendments to ensure the operability of what will become retained EU law in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.

Lead Official:

Jesus Gallego
Animal Health and Welfare Division
Ext: 49243
6 December 2018
ANNEX
Legislation amended by The Import of Animals and Animal Products (Amendments) (United Kingdom) (EU Exit) Regulations 2018

1. Commission Decision 93/52/EC recording the compliance by certain Member States or regions with the requirements relating to brucellosis (B. melitensis) and according them the status of a Member State or region officially free of the disease

2. Commission Decision 93/352 laying down derogations from the conditions of approval for border inspection posts located in ports where fish is landed


4. Commission Decision 94/360/EC on the reduced frequency of physical checks of consignments of certain products to be implemented from third countries

5. Commission Decision 1995/410/EC laying down the rules for the microbiological testing by sampling in the establishment of origin of poultry for slaughter intended for Finland and Sweden

6. Commission Decision 1997/152/EC concerning the information to be entered in the computerized file of consignments of animals or animal products from third countries which are re-dispatched


9. Commission Decision 2000/572/EC laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries

10. Commission Decision 2001/812/EC laying down the requirements for the approval of border inspection posts responsible for veterinary checks on products introduced into the Community from third countries

11. Commission Decision 2003/459/EC on certain protection measures with regard to monkey pox virus
12. Commission Decision 2003/467/EC establishing the official tuberculosis, brucellosis, and enzootic-bovine-leukosis-free status of certain Member States and regions of Member States as regards bovine herds

13. Commission Decision 2003/779/EC laying down animal health requirements and the veterinary certification for the import of animal casings from third countries


15. Commission Regulation (EC) No 282/2004 introducing a document for the declaration of, and veterinary checks on, animals from third countries entering the Community


17. Commission Regulation No (EC) 2005/1739/EC laying down animal health requirements for the movement of circus animals between Member States

18. Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats coming from Malaysia (Peninsula) and Australia

19. Commission Decision 2006/168/EC establishing the animal health and veterinary certification requirements for imports into the Community of bovine embryos


21. Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community

22. Commission Decision 2007/240/EC laying down new veterinary certificates for importing live animals, semen, embryos, ova and products of animal origin into the Community

23. Commission Decision 2007/275/EC concerning lists of animals and products to be subject to controls at border inspection posts

24. Commission Decision 2007/777/EC laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries

25. Commission Decision 2008/185/EC on additional guarantees in intra-Community trade of pigs relating to Aujeszky’s disease and criteria to provide information on this disease

26. Commission Decision 2008/636/EC establishing the list of third countries from which Member States authorise imports of ova and embryos of the porcine species
27. Commission Regulation (EC) No 798/2008 laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements

28. Commission Regulation (EC) No 119/2009 laying down a list of third countries or parts thereof, for imports into, or transit through the Community of meat of wild leporidae, of certain wild land mammals and of farmed rabbits and the veterinary certification requirements


31. Commission Decision 2009/821/EC drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces

32. Commission Regulation (EU) No 206/2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements

33. Commission Decision 2010/470/EC laying down model health certificates for trade within the Union in semen, ova and embryos of animals of the equine, ovine and caprine species and in ova and embryos of animals of the porcine species

34. Commission Decision 2010/472/EC on imports of semen, ova and embryos of animals of the ovine and caprine species


38. Commission Implementing Decision 2011/630/EU on imports into the Union of semen of domestic animals of the bovine species

39. Commission Regulation (EU) No 28/2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products

40. Commission Implementing Decision 2012/137/EU on imports into the Union of semen of domestic animals of the porcine species
41. Commission Implementing Decision 2013/139/EU laying down animal health conditions for imports of certain birds into the Union and the quarantine conditions thereof

42. Commission Implementing Decision 2013/503/EU recognising parts of the Union as free from varroosis in bees and establishing additional guarantees required in intra-Union trade and imports for the protection of their varroosis-free status

43. Commission Implementing Decision 2013/519 concerning the list of territories or third countries from which dogs, cats and ferrets are authorised to be imported in accordance with Directive 92/65/EEC


46. Commission Implementing Regulation EU 743/2013 introducing protective measures on imports of bivalve molluscs from Turkey intended for human consumption

47. Commission Implementing Decision 2013/764/EU concerning animal health control measures relating to classical swine fever in certain Member States

48. Commission Implementing Regulation (EU) No 636/2014 on a model certificate for the trade of unskinned large wild game

49. Commission Decision 2015/1901/EU laying down certification rules and a model health certificate for importation into the Union of consignments of live animals and of animal products from New Zealand

50. Commission Implementing Decision (EU) 2018/320 on certain animal health protection measures for intra-Union trade in salamanders and the introduction into the Union of such animals in relation to the fungus Batrachochytrium salamandrivorans

51. Commission Implementing Regulation (EU) 2018/659 on the conditions for the entry into the Union of live equidae and of their semen, ova and embryos


53. Commission Implementing Regulation (EU) 2018/878 of 18 June 2018 adopting the list of Member States, or parts of the territory of Member States, that comply with the rules for categorisation laid down in Article 2(2) and (3) of Delegated Regulation (EU) 2018/772 concerning the application of preventive health measures for the control of Echinococcus multilocularis infection in dogs.